

This letter discusses the taxation of shipping and handling charges. See 86 Ill. Adm. Code 130.415. (This is a GIL).

August 6, 2004

Dear Xxxxx:

This letter is in response to your Consumer Complaint filed with the Illinois Attorney General's Office dated November 3, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am not complaining about the product ... just their taxing procedures. I understand the Illinois state tax on the merchandise. I am questioning why I am taxed on Shipping and Handling. Only 4 states are paying tax on the Shipping and Handling. I think their catalog should reflect the Sales Tax before adding in Shipping & Handling charges. Difference is (0.56¢). Just to know if this process is legal. Is the State of Illinois receiving that additional tax revenue or for that matter is COMPANY even reporting the extra tax from other states or keeping it as profit?

Your Complaint has been forwarded to our office for review. Out-of-State retailers are obligated to register and collect Use Tax from Illinois consumers under certain circumstances, or may do so voluntarily, depending on each individual sale. "COMPANY" appears to collect Use Tax in fulfillment of its obligations.

In computing Retailers' Occupation Tax and Use Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, idle time charges, incoming freight or transportation costs, overhead costs, processing charges, clerk hire or salesmen's commissions, interest paid by the seller, or any other expenses whatsoever. Costs of doing business are an element of the retailer's

gross receipts subject to tax even if separately stated on the bill to the customer. See 86 Ill. Adm. Code 130.410.

Handling charges represent a retailer's cost of doing business, and are not deductible from the gross charges subject to tax. However, handling charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling" as well as delivery or transportation charges, in general, are not taxable if it can be shown that they are both separately agreed to, and that such charges are actually reflective of the costs of shipping. To the extent shipping and handling charges exceed the actual costs of shipping, the charges are subject to tax. See 86 Ill. Adm. Code 130.415. Separately listing the shipping and handling charges on an invoice does not sufficiently demonstrate that the charges were separately agreed to by the parties. When shipping and handling charges are included in the selling price of the property, they are subject to tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk